

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

DONALD PITCHERS

DEFENDANTS

NCO FINANCIAL SYSTEMS, INC.

(b) County of Residence of First Listed Plaintiff

County of Residence of First Listed Defendant

(c) Attorney's (Firm Name, Address, Telephone Number and Email Address)

Craig Thor Kimmel, Esquire
Kimmel & Silverman, P.C.
30 E. Butler Pike
Ambler, PA 19002
(215) 540-8888

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 2 U.S. Government Defendant
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|-----------------------------------------|----------------------------|----------------------------|---------------------------------------------------------------|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input checked="" type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

15 U.S.C. SECTION 1692

Brief description of cause:

Fair Debt Collection Practices Act

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S)

(See instructions):

JUDGE

DOCKET NUMBER

Explanation:

DATE

SIGNATURE OF ATTORNEY OF RECORD

06/19/2012

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: 6350 West 16th Rd., Bloomington, IN 47403

Address of Defendant: 507 Prudential Rd., Horsham PA 19044

Place of Accident, Incident or Transaction: _____
(Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?

(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a))

Yes ☐ No ☒

Does this case involve multidistrict litigation possibilities?

Yes ☐ No ☒

RELATED CASE, IF ANY:

Case Number: _____ Judge _____ Date Terminated: _____

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?
Yes ☐ No ☒
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?
Yes ☐ No ☒
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?
Yes ☐ No ☒
4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?
Yes ☐ No ☒

CIVIL: (Place ☒ in ONE CATEGORY ONLY)

A. Federal Question Cases:

1. ☐ Indemnity Contract, Marine Contract, and All Other Contracts
2. ☐ FELA
3. ☐ Jones Act-Personal Injury
4. ☐ Antitrust
5. ☐ Patent
6. ☐ Labor-Management Relations
7. ☐ Civil Rights
8. ☐ Habeas Corpus
9. ☐ Securities Act(s) Cases
10. ☐ Social Security Review Cases
11. ☒ All other Federal Question Cases 15 U.S.C. § 1692
(Please specify)

B. Diversity Jurisdiction Cases:

1. ☐ Insurance Contract and Other Contracts
2. ☐ Airplane Personal Injury
3. ☐ Assault, Defamation
4. ☐ Marine Personal Injury
5. ☐ Motor Vehicle Personal Injury
6. ☐ Other Personal Injury (Please specify)
7. ☐ Products Liability
8. ☐ Products Liability — Asbestos
9. ☐ All other Diversity Cases
(Please specify)

ARBITRATION CERTIFICATION

(Check Appropriate Category)

I, Craig Thor Kimmel, counsel of record, do hereby certify:
☐ Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;
☐ Relief other than monetary damages is sought.

DATE: 06/19/12

Attorney-at-Law

57100

Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 06/19/12

Attorney-at-Law

57100

Attorney I.D.#

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CASE MANAGEMENT TRACK DESIGNATION FORM

DONALD PITCHERS	:	CIVIL ACTION
	:	
v.	:	
	:	
NCO FINANCIAL SYSTEMS, INC.,	:	NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ()
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ()
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. (X)
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ()
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ()
- (f) Standard Management – Cases that do not fall into any one of the other tracks. ()

06/19/2012
Date

Craig Thor Kimmel
Attorney-at-law

Plaintiff, Donald Pitchers
Attorney for

215-540-8888
Telephone

877-788-2864
FAX Number

kimmel@creditlaw.com
E-Mail Address

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20

20

21.

21

PARTIES

5. Plaintiff is a natural person residing in Bloomington, Indiana 47403 at the time of the alleged harassment.

6. Plaintiff is a "consumer" as that term is defined by 15 U.S.C. § 1692a(3).

7. Defendant is a national debt collection company with its corporate headquarters located at 507 Prudential Road, Horsham, Pennsylvania 19044.

8. Defendant is a "debt collector" as that term is defined by 15 U.S.C. § 1692a(6), and repeatedly contacted Plaintiff in an attempt to collect a debt.

9. Defendant acted through its agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.

FACTUAL ALLEGATIONS

10. At all relevant times, Defendant was attempting to collect an alleged consumer debt from Plaintiff.

11. The alleged debt at issue, an American Express credit card account, arose out of transactions, which were primarily for personal, family, or household purposes.

12. Throughout the month of May 2012, Defendant repeatedly and continuously contacted Plaintiff on his home, cellular, and work telephones in its attempts to collect a debt.

13. Plaintiff regularly received collection calls from the following telephone numbers: (800) 350-2457 and (866) 576-1447, which the undersigned has confirmed are telephone numbers belonging to Defendant.

14. During the relevant period, Defendant continuously and repeatedly contacted Plaintiff on a daily basis, sometimes calling him as frequently as two (2) to five (5) times a day.

1 15. On numerous occasions, Plaintiff answered Defendants calls and instructed
2 Defendant to stop calling him.

3 16. On one occasion, Defendant's collector claimed to Plaintiff that he "had no choice
4 but to talk to [her]."

5 17. Defendant continued to call Plaintiff in its attempts to collect a debt.

6 18. Most recently, Defendant contacted Plaintiff on May 19, 2012, at 9:30 a.m., 1:00
7 p.m. and 6:00 p.m.; on May 20, 2012, at 3:00 p.m.; and May 23, 2012, at 9:30 a.m. and 12:30
8 p.m.

9 19. In those instances when Defendant called Plaintiff's work telephone, Plaintiff
10 informed Defendant that it was calling a business line, that he did not want to receive calls on
11 this number, and to stop calling his work telephone.

12 20. It was inconvenient for Plaintiff to receive collection calls on his work telephone.

13 21. Defendant disregarded Plaintiff's instructions and continued to contact him on his
14 work telephone.

15 22. Most recently, on May 23, 2012, Defendant contacted Plaintiff on his work
16 telephone at 12:30 p.m.

17 23. In addition to the quantity of telephone calls, Defendant also left Plaintiff
18 voicemail messages on his home telephone.

19 24. Lastly, within five (5) days of its initial communication with Plaintiff, Defendant
20 failed to send Plaintiff written notification of his rights to dispute the debt and/or request
21 verification as well as informing his of the amount of the debt and the name of the creditor.

22 25. To date, Defendant has not sent any written correspondence to Plaintiff.
23
24
25

1 26. As a result, Plaintiff has no knowledge of the amount of the debt Defendant was
2 seeking to collect from him.

3 27. Defendant's actions in attempting to collect this debt were harassing and abusive
4 to Plaintiff.

5 **DEFENDANT VIOLATED THE FAIR DEBT COLLECTION PRACTICES ACT**

6 **COUNT I**

7 28. Defendant's conduct, detailed in the preceding paragraphs, violated 15 U.S.C.
8 §§1692c(a)(1) and 1692c(a)(3).
9

10 a. A debt collector violates §1692c(a)(1) of the FDCPA by communicating
11 with a consumer in connection with the collection of any debt at any
12 unusual time or place or a time or place known or which should be known
13 to be inconvenient to the consumer. In absence of knowledge of
14 circumstances to the contrary, a debt collector shall assume that the
15 convenient time for communicating with a consumer is after 8:00 a.m. and
16 before 9:00 p.m., local time at the consumer's location.

17 b. A debt collector violates §1692c(a)(3) of the FDCPA by communicating
18 with a consumer in connection with the collection of any debt at the
19 consumer's place of employment if the debt collector knows or has reason
20 to know that the consumer's employer prohibits the consumer from
21 receiving such communication.
22

23 c. Here, Defendant violated §§1692c(a)(1) and 1692c(a)(3) of the FDCPA
24 when it contacted Plaintiff on his work telephone, knowing that it was
25

1 inconvenient for him to receive collection calls on his work telephone and
2 that he did not want to be called on his work telephone.

3
4 **COUNT II**

5 29. Defendant's conduct, detailed in the preceding paragraphs, violated 15 U.S.C.
6 §§1692d and 1692d(5).

- 7
- 8 a. A debt collector violates § 1692d of the FDCPA by engaging in conduct
9 the natural consequence of which is to harass, oppress, or abuse any person
10 in connection with the collection of a debt.
- 11 b. Section 1692d(5) of the FDCPA prohibits debt collectors from causing a
12 telephone to ring or engaging any person in telephone conversation
13 repeatedly or continuously with the intent to annoy, abuse, or harass any
14 person at the called number.
- 15 c. Here, Defendant violated §§1692d and 1692d(5) of the FDCPA when it
16 called Plaintiff multiple times a day and on numerous days a week on his
17 home, cellular, and work telephones, in addition to leaving multiple
18 voicemail messages on Plaintiff's home telephone.

19 **COUNT III**

20 29. Defendant's conduct, detailed in the preceding paragraphs, violated 15 U.S.C.
21 §1692g(a).

- 22
- 23 a. A debt collector violates §1692g(a) of the FDCPA by failing to send to the
24 consumer, within five days after its initial communication with a consumer
25 in connection with the collection of a debt, a written notice containing: (1)

1 the amount of the debt; (2) the name of the creditor to whom the debt is
 2 owed; (3) a statement that unless the consumer, within thirty days after
 3 receipt of the notice, disputes the validity of the debt, or any portion
 4 thereof, the debt will be assumed to be valid by the debt collector; (4) a
 5 statement that if the consumer notifies the debt collector in writing within
 6 the thirty-day period that the debt, or any portion thereof, is disputed, the
 7 debt collector will obtain verification of the debt or a copy of a judgment
 8 against the consumer and a copy of such verification or judgment will be
 9 mailed to the consumer by the debt collector; and (5) a statement that, upon
 10 the consumer's written request within the thirty-day period, the debt
 11 collector will provide the consumer with the name and address of the
 12 original creditor, if different from the current creditor.

- 14 b. Here, Defendant violated §1692g(a) of the FDCPA by failing to send
 15 written notification, within five (5) days after its initial communication
 16 with Plaintiff, advising Plaintiff of her rights to dispute the debt or request
 17 verification of the debt or providing her with the name of the original
 18 creditor and the amount of the debt.

19 WHEREFORE, Plaintiff, DONALD PITCHERS, respectfully prays for a judgment as
 20 follows:
 21

- 22 a. All actual damages suffered pursuant to 15 U.S.C. § 1692k(a)(1);
 23 b. Statutory damages of \$1,000.00 for the violation of the FDCPA pursuant to
 24 15 U.S.C. § 1692k(a)(2)(A);
 25 c. All reasonable attorneys' fees, witness fees, court costs and other litigation
 costs incurred by Plaintiff pursuant to 15 U.S.C. § 1693k(a)(3); and

d. Any other relief deemed appropriate by this Honorable Court.


DEMAND FOR JURY TRIAL

PLEASE TAKE NOTICE that Plaintiff, DONALD PITCHERS, demands a jury trial in
this case.

DATED:

RESPECTFULLY SUBMITTED,

KIMMEL & SILVERMAN, P.C.

By: 
Craig Thor Kimmel
Attorney ID #157100
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